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February 2, 1995

EX PARTE

William F. Caton
Acting Secretary
Federal Communications Commission
Mail Stop 1170
1919 M Street, N.W., Room 222
Washington, D.C. 20554

RECEIVED

FEB - 2 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Dear Mr. Caton:

Re: CC Docket No. 94-54 Equal Access and Interconnection obligations Pertaining to
Commercial Mobile Radio Services

✕ ✕ ✕ RM 8577 - Amendment of the Commission's Rules to Preempt State and Local
Regulation of Tower Siting for Commercial Mobile Services and Providers

Today, Jim Tuthill, Senior Attorney of Pacific Bell, and I met with John Cimko Jr., Chief, and Michael Wack, Deputy Chief, Policy Division, Wireless Telecommunications Bureau to discuss issues contained in the attached letters which were distributed during the meeting. We also discussed issues including roaming, raised in CC Docket No. 94-54 referenced above, as well as issues raised by the pending petition for preemption of the local zoning requirements for cell sites. Please associate this material with the above-referenced proceeding.

We are submitting two copies of this notice in accordance with Section 1.1206(a)(1) of the Commission's Rules.

Please stamp and return the provided copy to confirm your receipt. Please contact me should you have any questions or require additional information concerning this matter.

Sincerely,



Attachments - 3 Letters

cc: John Cimko, Jr.
Michael Wack

November 8, 1994

Mr. Myron C. Peck, Deputy Chief,
Mobile Services Division
Federal Communications Commission
Mail Stop 1600D
1919 M Street, N.W., Room 644
Washington, D.C. 20554

Re: AirTouch Communications-Refusal To Allow Number Transferability.

Dear Mr. Peck:

We need your help. AirTouch Communications, after a number of meetings and discussions, has refused to allow us to place our NXX codes on its facilities and transfer those codes to other facilities if we choose to do so. AirTouch's action violates Commission orders and rules, and it is discriminatory. AirTouch is trying to delay our entry into the wireless business. Unless the Commission sends a prompt and firm message to the cellular industry that conduct like this will not be tolerated, new entrants like ourselves may never overcome cellular's ten-year head start and provide the competition to cellular the Commission wants.

Number transfer allows a reseller to obtain its own blocks of NXX codes and place those numbers on a cellular providers facilities. If the reseller chooses, it can then move those customers and the numbers to another facility. I wrote AirTouch on October 21 to confirm my understanding that they would not allow this. AirTouch responded and said that it would not allow us to load our NXX codes on its facilities. These letters are attached.

At the beginning of the cellular industry, the Commission recognized that number transferability would help to mitigate the head start wireline cellular providers had over non-wireline cellular providers. In a 1985 decision, the Commission found that "a transferable NXX scheme ... would serve the public interest." Report and Order, 59 Rad. Reg. 2d 209 (1985). A transferable number scheme provides a reseller with its own NXX code which allows the reseller to transfer its customers to its own system when it becomes operational. Id. at para. 5.

The head start faced today by new market entrants like ourselves is severe in contrast to what the non-wireline cellular providers confronted in the mid eighties. All cellular carriers have systems and a base of customers, and many have joined to form powerful alliances, (e.g., ATT/McCaw, Nynex/Bell Atlantic, and AirTouch/US West.)

New entrants may be unable to overcome cellular's ten-year head-start. Officers of AirTouch in fact boasted of this. In April of this year, a senior officer of AirTouch said "I don't believe PCS will ever catch up to - let alone surpass - cellular.... [C]ellular carriers' more than 10-year head start over PCS providers is virtually insurmountable." "AirTouch execs say PCS will play small role," Telephony, April 18, 1994, copy attached.

The Commission's decisions require AirTouch to allow us to load our NXX codes on its facilities. In the Cellular Report and Order, 86 FCC 2d 469, at p. 511 (1981) the Commission said that AT&T and its underlying cellular affiliate were required to "provide system capacity to non-affiliate retailers or resellers on a non-discriminatory basis and *on the same terms and conditions as its own distribution arm.*" Emphasis supplied. In In re Application of GTE Mobilnet of Houston Limited Partnership, 1987 FCC Lexis 3539 (1987), the Mobile Services Division applied this rule. The Division told GTE, the wireline cellular provider, to allow the non-wireline reseller to place its own NXX codes on GTE's facilities. The Division said:

...we emphasize that the Commission has specifically found that where it is technically feasible, a non-wireline reseller is entitled to be assigned a distinct NXX code.... If GTE should fail to enter into appropriate resale or roamer agreements...HCTC will have standing to file a formal complaint.... In this regard, the Commission has stated that a wireline licensee must provide system capacity to non-affiliated retailers or resellers on a non-discriminatory basis and on the same terms and conditions as [to] its own distribution arm. Para. 6.

The party seeking number transferability here - HCTC - was not the non-wireline cellular provider (Block A) in the market at issue; it was just a reseller in that market. Thus, the principle and precedent of this order support our position and refute AirTouch's argument that it is only obliged to provide number transferability to the non-wireline cellular provider (Block A). Further, the requirement for equal treatment was just affirmed by the Commission in In the Matter of Cellnet Communications, Inc. v. Detroit SMSA Limited Partnership, E-91-95, 1994 FCC Lexis 4962 July 8, 1994.

We are asking you to inform AirTouch that its conduct is unlawful, and that it must allow us to put our own NXX codes on its facilities and permit number transferability. If existing cellular providers are permitted to thwart new entrants in this manner, cellular carriers - as AirTouch has bragged - may never face competition from new wireless providers.

Yours truly,

A handwritten signature in cursive script, appearing to read "James P. Tuthill".

James P. Tuthill
Senior Counsel

Attachments

cc: P. H. White, General Counsel, AirTouch Communications
Robert M. Pepper, Chief, Office of Plans & Policy
Donald H. Gips, Deputy Chief, Office of Plans & Policy

James P. Tutthill
Senior Counsel

Legal Department
140 New Montgomery Street
San Francisco, California 94105
(415) 540-7564

PACIFIC BELL
A Pacific Telesis Company

October 21, 1994

**Mr. Paul White
General Counsel
AirTouch Communications
2999 Oak Road
Walnut Creek, CA 94596**

Dear Paul:

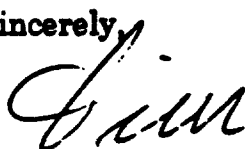
I received your voice message about customer/number transfer. It's important we clearly understand AirTouch's position. That's why I'm writing.

We want to obtain our own blocks of NXX codes and place those numbers on your switches. We further want to have the right to move those numbers and the customers to other facilities if we choose to do so. This would provide customer/number transfer.

AirTouch's position is that it is only obligated to provide customer/number transfer for the block A cellular provider; AirTouch believes that it is not required by either the Federal Communications Commission or the California Public Utilities Commission to provide that capability to resellers, such as Pacific Bell Mobile Services.

Please advise in writing if this is AirTouch's position, or correct my understanding if I am wrong. Thanks, Paul.

Sincerely,





Paul H. White
General Counsel

AirTouch Communications
2999 Oak Road, MS 800
Walnut Creek, CA 94596

Telephone: 510 210-3800
Facsimile: 510 210-3599

October 28, 1994

11/2
James P. Tuthill, Esq.
Senior Counsel
Pacific Bell
140 New Montgomery Street, Room 1529
San Francisco, CA 94105

Dear Jim:

From your letter I think you correctly understand our position, but let me repeat it below:

1. There are, in theory, a couple of ways in which Pacific Bell can obtain its own blocks of cellular numbers, have those numbers operate as a "B-Block" cellular number in Los Angeles, and yet be able to transfer the number and customers to other facilities if you choose to do so.
2. One of the ways in which this could be accomplished was described by the CPUC in D. 94-08-022. However, we think that decision is incorrect as a matter of law, and is not a good use of resources to pursue. In any event, it appears this is not an option you want to pursue now.
3. Another of the ways in which this could be accomplished is the method the FCC prescribed to compensate for the claimed "head start" of the B-Block cellular carriers by requiring special interim rules under which the A-Block carrier could temporarily resell after licensing, but before its own system was built.
4. Absent a new FCC order prescribing such treatment, we do not believe we have an obligation to extend to Pacific Bell today the kind of special reseller treatment given to the A-Block carriers for a period of time several years ago. Nor do we believe Pacific Bell has the authority to assign NXX codes to its own cellular reseller affiliate for this purpose.

James P. Tuthill, Esq.
October 28, 1994
Page 2

I hope this answers your questions. If you have any further questions, please feel free to call or write.

Sincerely,

A handwritten signature in cursive script, appearing to read "Paul".

Paul H. White

current figures on phone service availability in Colombia were not provided by Northern Telecom, the digital upgrade project will increase phone service coverage throughout the country, said a spokesman for Northern Telecom-CALA, the vendor's sales and marketing arm for the Caribbean and Latin America.

The Colombian project is one of several Latin American deals Northern Telecom-CALA is cultivating. The

company is part of a consortium going after a hotly contested contract to build a cellular infrastructure in Colombia, the spokesman said. The government will announce the recipients of the contract within weeks. If chosen, Northern Telecom would deploy its DMS-MTX time division multiple access SuperNode systems.

Northern Telecom-CALA also has equipment contracts in Brazil, Mexico, and several Caribbean locales. ■

AirTouch execs say PCS will play small role

Charles F. Mason, East Coast Bureau Chief

While maintaining their continued interest in competing for personal communication services (PCS) licenses, the top two executives at AirTouch say they don't believe PCS will reach a point of equality with cellular in the years to come.

"I don't believe PCS will ever catch up to—let alone surpass—cellular," said Lee Cox, president of AirTouch.

Continued delays by the Federal Communications Commission to license PCS is also good news, said Sam Ginn, AirTouch chairman.

"The delay is in our favor," he said. "[The longer] we can maintain the current wireless market structure, the better."

Both men spoke during a recent press briefing as the company was officially spun off from Pacific Telesis.

While AirTouch plans to bid for PCS licenses, Ginn said "if there is a bidding frenzy, we will not participate."

Cox said that cellular carriers' more than 10-year head start over PCS providers is virtually insurmountable. He estimated that it will take PCS carriers seven or eight years to deploy networks as ubiquitous as cellular and by that time cellular carriers will have improved their networks even further.

Ginn declined to discuss rumors that his company is planning an alliance of some sort with another cellular carrier, other than to say that "everybody is talking to everybody."

AirTouch has been rumored to have been involved in talks with Nynex and Bell Atlantic.

As part of its newly won freedom from the Modified Final Judgment, the

company is planning to implement a new long-distance strategy by June. No longer subject to the equal access requirements or the service restrictions imposed by the MFJ, the company plans to transport its own completely wireless services, including interexchange calls, Cox said. For other long-distance calls, AirTouch will soon have an agreement with "one or more" interexchange carriers that will allow it to buy service wholesale and resell it to cellular subscribers at retail, he said.

While discounting the threat from PCS, both executives said they plan to meet any competitive challenges from Nextel or PCS providers. They said the outlook for wireless telecommunications, both domestically and globally, is unparalleled. ■

Eunetcom to use NET backbone equipment

Network Equipment Technologies Inc. will supply its wide area network bandwidth managers and other equipment to Eunetcom, a joint venture of France Telecom and Deutsche Telekom that is building a data network for European multinational corporations.

NET's IDNX/90 Communications Resource Manager will be installed on an 18-node backbone network, with two units at each node, by the middle of this year. Eunetcom's backbone network will connect to eight sites in seven European countries, including Paris and Frankfurt, where Eunetcom is based. In addition, there eventually will be a trans-Atlantic connection to the United States, and the network will be further expanded over the next several years, according to Eunetcom.

Eunetcom plans to offer outsourcing services, managed bandwidth services and private network solutions to large multinational customers, including banking and financial institutions, retail organizations, government entities and other businesses. The joint venture company also will use NET's NetOpen network management system, and will resell frame relay services using its IDNX FrameXpress option.

NET is based in Redwood City, Calif. It also operates an office in Paris, from which it will coordinate its relationship with Eunetcom.

MFS Intelenet serves up its own numbers

MFS Intelenet made history recently, becoming the first competitive access provider to activate blocks of telephone numbers directly assigned to its own switch. That means incoming calls to some MFS Intelenet customers no longer have to pass through New York Telephone switches.

The company activated two blocks of about 10,000 phone numbers each in New York City's 212 area code. The action will reduce the potential for technical problems, and improve service reliability and security, according to MFS Intelenet, which has been offering integrated local and long-distance service to small and medium-sized business customers since last October (*Telephony*, Oct. 4, 1993, page 1).

The activation of the new number blocks, known as NXX codes, follows an order issued late last year by the New York Public Service Commission stating that NXX codes should be allocated to MFS Intelenet. Prior to this order, the MFS Communications subsidiary had to lease phone numbers from New York Tel. MFS Intelenet also has asked regulators in Illinois, Maryland and Pennsylvania to follow the lead of the New York PSC.

Being able to assign its own numbers will help MFS Intelenet emerge as an independent carrier, forcing New York Tel to treat it on the same basis as In-

continued on page 14



David A. Gross
Washington Counsel

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Telephone: 202 293-4955
Facsimile: 202 293-4970

December 1, 1994

Mr. Myron C. Peck, Deputy Chief
Mobile Services Division
Federal Communications Commission
Mail Stop 1600 D
1919 M Street, N.W., Room 644
Washington, D.C. 20554

Re: Cellular Resale Obligations to Prospective PCS Bidders

Dear Mr. Peck:

On November 8, 1994, Pacific Bell wrote to you asking that you require AirTouch Communications "to allow [Pacific Bell] to place our NXX codes on [AirTouch's] facilities and transfer those codes to other facilities if we choose to do so." (Letter from James Tuthill at 1.) As discussed below, there is no legal basis for the Commission to grant Pacific Bell's request. To the contrary, because the underlying factual and legal basis for Pacific Bell's request are obsolete and irrelevant, and because the Commission is actively considering in a rulemaking / notice of inquiry proceeding (CC Docket No. 94-54) the rules that should apply to such resale arrangements, it would be premature and improper for the Commission to grant Pacific Bell's request.

In essence, Pacific Bell argues that because it might win a PCS licensee during the upcoming broadband auctions, AirTouch -- and presumably other cellular carriers -- must treat Pacific Bell the exact same way non-wireline cellular carriers were treated during the 1980s. Pacific Bell's claims are incorrect because the legal and factual circumstances surrounding PCS providers in the mid-1990s are fundamentally different from the unique "headstart" issues that were faced by prospective second cellular carriers during the 1980s. The situation addressed in the old cellular cases relied upon by Pacific Bell all involved markets where there was only one facilities-based cellular carrier operating in a market. That historically unique circumstance, where there was no facilities-based cellular competition, does not apply today to any of AirTouch's cellular markets. As a result, the old cellular cases Pacific Bell relies upon for its claim that carriers such as AirTouch are required to allow Pacific Bell to load its own NXX codes on to their switches are simply obsolete and inapposite.¹

¹ Because the cases relied upon by Pacific Bell are so clearly obsolete and insufficient to support its request, there is no need for us to address the other important legal issues raised by Pacific Bell's request, including whether Pacific Bell is lawfully authorized to

The Commission recently recognized that "headstart" and resale issues involving prospective PCS carriers are fundamentally different from those involving the cellular industry during the mid-1980s. See "Notice of Proposed Rule Making and Notice of Inquiry" (CC Docket No. 94-54), 9 FCC Rcd 5408 (1994) ("Equal Access NPRM"). In that proceeding, the Commission stated that the existence of facilities-based cellular competition requires that it carefully evaluate the nature and extent of the resale obligations imposed upon CMRS providers, including cellular carriers, so that the public will be best served. *Id.* at 5466-67. As a result, the Commission is grappling in that proceeding with the same complex issues raised by Pacific Bell's request, *i.e.* whether or not imposing resale obligations on facilities-based cellular carriers in a multi-carrier environment will undercut the Commission's important policy objectives of promoting rapid, wide-area build out by new PCS carriers.

The importance and difficulty of these issues is underscored by the fact that the Commission is actively considering whether to eliminate entirely the obligation that cellular carriers must allow PCS carriers to resell cellular services at all. Specifically, the Commission has sought comment on "whether, for the various CMRS geographic market areas to develop expeditiously and meet our policy objectives, cellular providers should be exempt from providing [any] resale to facilities-based CMRS competitors in their service areas even during the first five years that these competitors hold their licenses". Equal Access NPRM, 9 FCC Rcd at 5467 (emphasis added.) Clearly, to take the action sought by Pacific Bell would be improper as it would prejudice the outcome of the Commission's pending proceeding.

In addition to Pacific Bell's erroneous legal arguments, AirTouch is also concerned about certain other statements made by Pacific Bell in its letter to you. For example, Pacific Bell claims that "AirTouch is trying to delay our entry into the wireless business" (Letter at 1) and that "AirTouch has bragged" that cellular carriers "may never face competition from new wireless providers" such as PCS (Letter at 3). AirTouch does not seek to delay in any way Pacific Bell's entry into the wireless business. To the contrary, AirTouch hopes that Pacific Bell's new cellular resale operations -- in which it seeks, among other things, to resell AirTouch's cellular services -- is successful because AirTouch will directly benefit from the greater cellular usage and penetration levels. AirTouch does, however, object to giving Pacific Bell advantages not provided to other cellular resellers.

In addition, it is absolutely false that AirTouch has bragged that it may never face competition from new wireless providers, including PCS carriers. In fact, AirTouch already faces tough competition in California from other CMRS providers, including Nextel. Furthermore, because AirTouch recognizes the potentially important role PCS

assign NXX codes to its own cellular reseller affiliate when there is a severe shortage of such codes in California. See *e.g.*, Comments of AirTouch Communications filed on September 16, 1994, In the Matter of Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech - Illinois (LAD File No. 94-102).

will play in the wireless industry, AirTouch has been a leader in helping to develop PCS technology and expects to be an active participant in the upcoming broadband PCS auctions though its substantial interest in PCS PrimeCo. Simply stated, AirTouch's PCS interests are at least as great as those claimed by Pacific Bell. However, all future PCS carriers, including both Pacific Bell and AirTouch, must await the outcome of the Commission's pending Equal Access NPRM to know the proper scope of any federally-mandated resale obligations placed on cellular carriers for the benefit of prospective PCS carriers.

If you have any questions regarding these matters, please feel free to contact either Kathleen Abernathy or me.

Best wishes.

Sincerely,



David A. Gross

cc: James P. Tuthill, Pacific Bell
Robert M. Pepper, Chief, Office of Plans & Policy
Donald H. Gips, Deputy Chief, Office of Plans & Policy

James P. Tuthill
Senior Counsel

Legal Department
140 New Montgomery Street
San Francisco, California 94105
(415) 542-7664

PACIFIC BELL
A Pacific Telesis Company

January 11, 1995

Nancy Boocker, Legal Advisor to Chief
Donald H. Gips, Deputy Chief
Myron C. Peck, Deputy Chief
Dan Phythyon, Senior Legal Assistant
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Dear Ms. Boocker, Messrs. Gips, Peck, Phythyon:

When we met on December 13th and 14th you asked us some questions about number transferability which we were unable to answer at that time. Mr. Peck also called a few days later and asked a couple of further questions. I am getting back to you with our answers. The holidays have delayed my response.

We explained our need to obtain our own NXX codes and place them on cellular facilities. We would resell cellular service, and then migrate our customers to our own facilities once they are built. This capability would help mitigate the 10 to 12 year head start cellular has over PCS which AirTouch has bragged about. I wanted to also tell you that since my meetings with you, LA Cellular appears to be willing to accommodate our request. GTE would allow us to place our own NXX codes on its facilities, but since we are bound to the equal access requirement (which they are not), we aren't in a position to resell their cellular service. AirTouch is the only cellular carrier we have been speaking to which has refused to allow us to resell with our own NXX code.

You asked 1) Would Pacific Bell assign NXX codes to other resellers? 2) What do Bellcore guidelines say about assigning NXX codes to other resellers? 3) What's involved in registering our own NXX codes on cellular facilities? And, 4) what's involved when we transfer customers to our own facilities?

The process is as follows. First, we ask Pacific Bell for NXX codes in the NPAs (such as 213, 415, or 510) in which we want to provide service. An NXX code is ten thousand numbers. Pursuant to policies developed by the Industry via the Industry Numbering Committee, Pacific Bell, as code administrator, would assign Pacific Bell Mobile Services the codes provided it is a certified carrier. It takes approximately 111 days to have Pacific Bell provision an NXX code. This is because national databases have to be updated with NXX

code information so calls can be routed and billed. Bellcore maintains and updates the Local Exchange Routing Guide that contains this data. The data tells where the NXX code resides, who holds the code, and other relevant information needed for routing and billing. The data base is maintained using six digits--NPA-NXX.

Pacific Bell would do this for any wireless carrier which files a registration statement with the California Public Utilities Commission and meets the existing industry approved central office code guidelines. These guidelines have been adopted by the Industry Carrier Compatibility Forum/Industry Numbering Committee (ICCF/INC), document ICCF 93-0729-010, 10-26-94. Membership is open to the telecommunications industry.

As you know, Congress preempted state entry regulation in the Omnibus Budget Reconciliation Act of 1993. Because of that, we only have to file a registration statement with the California Public Utilities Commission that lists certain basic information such as name, location, and telephone number. Pacific Bell would issue NXX codes to any wireless carrier that files that statement and meets the ICCF/INC guidelines. The ICCF/INC CO Code Assignment Guidelines do not explicitly deal with "registration," but, the intent of the guidelines is to have carriers either be certified or registered as required by appropriate regulatory authority. Pacific Bell will introduce language to the Industry Numbering Committee to update the current Guidelines to reflect the requirements of the Omnibus Budget Reconciliation Act of 1993. Bellcore, as the North American Numbering Plan Administrator, does not issue guidelines itself on NXX code assignment but participates in the ICCF/INC.

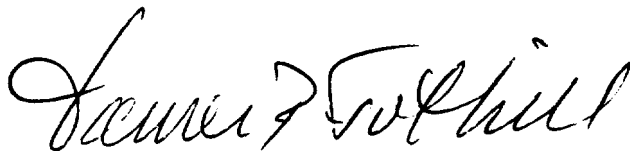
Next, we ask the cellular carrier to load the NXX codes into its Home Location Register (HLR). This is done via predefined software messages. The cellular carrier would follow the same steps it follows to load its own NXX codes into its HLR. Each cellular phone has an Electronic Serial Number (ESN) which is "burned" into the chip in the phone; the ESN is not changeable. To activate service, the ESN is matched with a Mobile Identification Number (MIN.) The MIN is simply the cellular phone's ten-digit number--NPA-NXX-XXXX. The MIN is programmable in the phone. Once the NXX is loaded into the HLR, the cellular operator matches the ESN with one of the MINs in the NXX block, and the customer has service. This responds to the third question.

Numbers and customers are moved to our facilities by moving the entire NXX code: it is removed from the cellular carrier's HLR and programmed into our HLR. The reason that the entire code must be moved is because at present the national routing and rating databases and Local Exchange Carrier operational support systems are not designed at this time to analyze digits beyond the NPA-NXX. The systems simply can't recognize ten digits, NPA-NXX-XXXX. The Industry Numbering Committee, via the Number Portability Workshop, is currently addressing the technical issues associated with transferring (porting) individual numbers from one carrier to another.

We would not force customers to move to our system. If a customer wants to remain on cellular service, we will re-route the customer's service to the cellular provider. Because we can't leave individual customer numbers on the cellular provider's HLR, (because we can't do ten digit recognition) we will move the numbers as explained above, but via a direct link with the cellular provider, route those customers' calls back to that cellular provider. We will do this at our expense, and it will be transparent to the customer. The customer will retain his or her number and receive cellular service.

If I have overlooked something, or clarity or elaboration are needed, please let me know.
Thank you for your considering our views.

Yours truly,

A handwritten signature in cursive script, reading "James P. Tuthill".

James P. Tuthill
Senior Counsel

cc: Gregory Rosston, Andrew Sinwell and Florence O. Setzer